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August 26, 1994

RECEIVED

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

AUG 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: PP Docket No. 93-253
Implementation of Section 309(j) of the
Communications Act -- Competitive Bidding
Fourth Report and Order, FCC 94-99,
Released May 10, 1992
DBMPC #15132

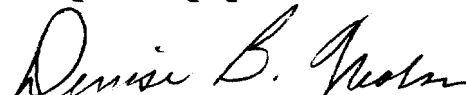
Dear Mr. Caton:

On behalf of IVDS/RLV Partnership, Friends of IVDS, IVDCO LLC, Wayne Partners, Infopower International, Nanowave Technologies, Zarg Corporation, WCTV Partners, Tele-Link Communications, AG Partners, Washington Communications, and New England Mobile Communication ("Petitioners"), there is transmitted herewith a Petition for Extraordinary Relief under the above-referenced Docket proceeding.

For the reasons set forth in the Petition, the Petitioners request relief from the further payment provisions, and adjustments to the installment payment provisions in the above-referenced Docket, on behalf of themselves and all similarly-situated winning bidders who have performed to date as required under Commission rules, and who eligible for award of IVDS licenses.

Should there be any question regarding the attached Petition, please contact the undersigned.

Very truly yours,


Denise B. Moline

DBM:wp
Attachment

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

AUG 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) PP Docket No. 93-253
)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)
Fourth Report and Order, FCC 94-99)
Released May 10, 1994

To: The Commission

PETITION FOR EXTRAORDINARY RELIEF

This Petition for Extraordinary Relief ("Petition") is being filed by IVDS/RLV Partnership, Friends of IVDS, IVDCO LLC, Wayne Partners, Infopower International, Nanowave Technologies, Zarg Corporation, WCTV Partners, Tele-Link Communications, AG Partners, Washington Communications, and New England Mobile Communication, Inc. ("Petitioners"). The Petitioners, for the reasons set forth below, request relief from certain of the payment provisions set forth in the above-captioned Order, and other relief, as described in detail below.

The Petitioners seek relief for three basic reasons:

1. It will be demonstrated herein that two (2) parties, namely Commercial Realty St. Pete, Inc. and Interactive America Corp., as well as other defaulting winning bidders, some, perhaps, working together, set the pace for the early bids on the major markets up for auction, skewing the overall values of all IVDS markets, thereby causing bona fide bidders to overbid and overpay for their target markets.
2. The defaulting bidders were the "winners" of thirty-one (31) segments within the Top 50 markets in the nation. In combination with other defaulting bidders, five of these markets are now completely without an IVDS licensee; both the A and B segments of the market were "won" by defaulting bidders.

3. Because of the magnitude of the defaults, considerable negative "press" has been focused on the fledgling IVDS industry. Investment in the sincere winning bidders' ventures will now be difficult to achieve. Other potential investors will likely wait for the MSA markets to be re-auctioned.

The Petitioners have standing to file this Petition since they actively participated in the IVDS Auction conducted by the Commission on July 28-29, 1994, were the winning bidder for one of the two licenses available in a total of thirty-five (35) markets representing more than thirteen and one-half (13½) million in population, and have since paid to the FCC the monies due representing the first half of their down-payment, as well as submitted the required Form 574.

THE DEFAULTING BIDDERS ARTIFICIALLY INFLATED IVDS MARKET VALUES

A bogus bidder has no financial responsibility nor a limit on its bid. Since "real" money is not involved, the bidder can bid up the price to be paid for a market until the rogue has exhausted the practical limits of the other bidders who are financially responsible and have an understanding of the spectrum's value in the target market.

In its Report and Order, the Commission stated its intention for the marketplace to set the value of the license. Surely, those having no intention of ever making their required payment cannot be classified as part of the true "marketplace" relied on by the Commission. Because such rogues participated in the IVDS Auctions, resources of bona fide bidders, intended for use in creating the industry and establishing basic infrastructure, were used up, in part, simply to acquire licenses at inflated prices. This diminishes the resources available for funding of construction, and for acquisition of complementary licenses in the RSA's in the same ADI's, by bona fide winners of licenses in the initial IVDS Auctions. This result is counterproductive to the establishment of new interactive services as a whole, and is contrary to the public interest in new service.

Commercial Realty and Interactive America were not the only two defaulting bidders; however, the damage done by these two parties alone was significant. Commercial Realty won 20 market licenses, all but two in the Top 50 markets, and Interactive won 15 market licenses, eight of which were in the Top 50 markets.

It is the bidding for the top markets, which are important "hub" markets, that sets the "beat" for the bidding overall. While the magnitude of damage caused by the defaulting bidders cannot be easily determined, the damage can be estimated by comparing the

winning bid for the first license in the market with the rebid for the second license in the market:

<u>Market</u>	<u>Winning Bidder</u>	<u>Winning Bid</u>	<u>Rebid</u>
Miami, FL	Commercial Realty	4.3M	3.1M
Tampa, FL*	Commercial Realty	3.9M	3.3M
Lakeland, FL	Interactive America	875K	675K
Sacramento, CA	Commercial Realty	2.0M	1.8M
Phoenix, AZ	Commercial Realty	2.9M	2.1M
Denver, CO	Commercial Realty	1.6M	1.3M
Baltimore, MD	Commercial Realty	2.2M	1.8M
San Diego, CA*	Interactive America	3.4M	2.6M
Portland, OR	Commercial Realty	1.9M	1.4M
Milwaukee, WI	Commercial Realty	1.5M	1.0M

* The "winning" bidder of both segments defaulted, leaving this market without a licensee.

The difference between the winning bid and the rebid averages over 30%; if the marketplace were truly setting the price of the license, then the spread would be in the range of \$50,000 - \$100,000 on average, or less than 5%.

Only a few Top 25 "hub", non-border markets, such as Atlanta and Miami, were expected by the Petitioners to be acquired for an amount close to \$1.00 per unit of population ("\$/pop"). The winning bid for Atlanta was \$1.15 per pop, Seattle \$1.22 per pop (a border market), Miami \$1.35 per pop, Tampa \$1.98 per pop, and Phoenix was \$1.37 per pop. Most of the other Top 25, non-border, "hub" markets were expected to sell for approximately 50¢/pop. Instead, the winning bid for Cleveland was 60¢ per pop, Minneapolis 78¢ per pop, Pittsburgh 91¢ per pop, St. Louis 66¢ per pop, Denver 86¢ per pop, Baltimore 94¢ per pop, Kansas City 90¢ per pop, and Cincinnati \$1.10 per pop.

The Petitioners are not alone in their opinion of market value. Many IVDS experts had similar expectations. Mr. Louis Martinez, President, RTT, a potential IVDS equipment supplier, printed the following values for the IVDS markets which had already been awarded some months ago in his "Outlook Paper" titled "Interactive Television (ITV) and Multimedia":

**Estimated IVDS Spectrum Value
(for each of two FCC Licenses)**

<u>ADI Mkt Number</u>	<u>IVDS Market</u>	<u>ADI TV Households</u>	<u>% U.S. TV Households</u>	<u>No. Lottery Applicants</u>	<u>Value at Auction</u>
1	New York	7,075,000	7.62%	798	\$1,591,875
2	Los Angeles	5,036,000	5.42%	502	\$1,133,100
3	Chicago	3,135,900	3.38%	491	\$ 705,578
4	Philadelphia	2,736,000	2.95%	464	\$ 615,600
5	San Francisco	2,223,600	2.39%	358	\$ 500,310
6	Boston	2,115,500	2.28%	385	\$ 475,988
7	Dallas	1,757,700	1.89%	378	\$ 395,483
9	Washington	1,718,600	1.85%	372	\$ 386,685
10	Houston	<u>1,483,200</u>	<u>1.60%</u>	<u>368</u>	\$ 333,720
Totals		27,281,500	29.38%	4116	

From the above, Mr. Martinez estimated the value of an IVDS license at less than 10¢ per pop. Presumably, a bidder would pay a premium for these Top 10 markets. Hence, from the above, the more than \$1.00 per pop "paid" by the Winning Bidders at the July 28-29, 1994 Auction was both excessive and absurd.

THE VIABILITY OF IVDS AS A SERVICE IS THREATENED

IVDS, as a new technology, requires access to all of the Nation's households to succeed as a viable interactive medium. Investors and potential IVDS programmers want to know that access to households in major and subsidiary markets would be available via IVDS if they were to enter into pilot projects now. Given the success of a pilot project, roll-out nationally would be assured.

However, because of insincerity on the part of a few bidders, major markets and the corresponding ADIs are now without their full complement of IVDS licensees; in some cases, both segments of major market licenses must be re-auctioned.

The winning bidders that met their obligation are, therefore, at an immediate disadvantage, since major markets are not represented as of this date and cannot be included within any network package deserving consideration by potential IVDS users. Hence, the fledgling industry is "on hold" to a certain degree until the Commission can re-auction the MSA market licenses and complete the auction of the RSA market licenses.

THE FCC NEEDS TO GRANT RELIEF

Relief is required of the FCC in order for bona fide IVDS licensees to be able to:

- ** Bid for the MSA market licenses that will be up for re-auction.
- ** Bid for the RSA market licenses to fulfil regional service areas, thereby providing cost efficiencies to the public.
- ** Develop an awareness on the part of potential users of IVDS and its capabilities.
- ** Promote a nationwide IVDS infrastructure to complement its uses by its users.

The damage to the bona fide IVDS licensee has been done. Only time and further massive investment can cure the damage and build an industry. Therefore, to accommodate the above, the Petitioners jointly request that the Commission grant the following requests, all of which should be applicable only to those bona fide winning bidders participating in the July 28-29, 1994 Auction:

1. Waive the requirement for the balance of the down-payment which must be paid five (5) days after grant of the license.
2. Waive the requirement for interest payments on the balance during the first twelve (12) months; interest only on the remaining 90% of the purchase price would be due during the second and third years of the revised installment payment program being proposed herein.
3. Extend the interest plus principal payment period from five (5) years to seven (7) years; the principal amount, and interest thereon, would be amortized over the final four (4) years of the revised installment payment program as proposed herein.
4. Either "freeze" the grant of all IVDS licenses until a re-auction can be conducted, or extend the time to construct the IVDS facility for a period of twelve (12) months from the date that all MSA licenses have been granted.

These measures may partially aid bona fide winners of IVDS licenses for the inflated costs which they paid for their MSA licenses, and will allow them to participate fully in the re-auctioning of the remaining MSA licenses, as well as in the RSA

Auctions, to provide a complement of licenses that will promote operation in the most economically feasible manner. At the same time, the total payments originally bid will ultimately be realized by the U.S. Treasury, with only a minimal delay. The Treasury will collect additional interest on the payments. Moreover, such relief to IVDS licensees will promote prompt buildout, thereby providing new employment opportunities, as well as new tax revenue, and new annual fees to the Commission. The relief measures proposed thus maximize the benefits of new service, and do not detract from the auction payments originally anticipated by Congress.

THE RE-AUCTION

Petitioners further plead that the Commission expedite the re-auction of the MSA market licenses to minimize any further havoc to the industry/licensees. At re-auction, the Petitioners request that the bidders be limited to those entities who registered on July 28-29, 1994, and, if they were a successful bidder, paid the monies due on August 8, 1994, and submitted their Form 574 on August 15, 1994. This eligibility requirement being supported by the Petitioners is consistent with the Commission's Fourth Report and Order which established qualification and registration procedures for all potential bidders for the MSA market licenses. To be qualified, the bidder must have submitted a valid Form 175 on June 27, 1994, and have satisfactorily registered on July 28-29, 1994. To now re-open the bidding for the MSA market licenses to newcomers would defeat the Commission's own Rules on the matter, as well as again place the winning bidders subject to exploitation by insincere bidders; perhaps even the same defaulting parties.

The Petitioners also request herein that the Commission grant to the winning or runner-up bidder who has satisfied his obligation, the following options for the re-auction:

- ** The opportunity to rebid on the market won if the other competing bidder defaulted.
- ** The opportunity to use bidding credits, if eligible, if the defaulting bidder claimed same previously.

CONCLUSION

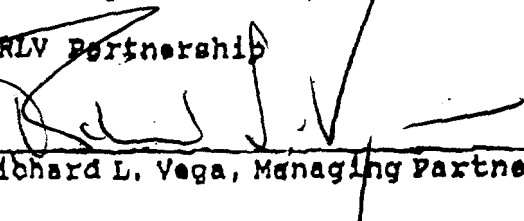
A request for the re-auction of all MSA market licenses was considered by the Petitioners. However, it did not appear that a re-auction of all MSA market licenses could easily be accomplished in the shortest time period possible. Rather, the Petitioners specific requests for monetary relief herein in place of a re-auction shall not subtract from the total amount of money that was expected to be paid to the FCC and the Treasury; only the timing of same. The Petitioners believe that the monetary and other relief requested herein is an adequate, and a more timely and reasonable, solution than voiding the July 28-29, 1994 Auction and beginning from scratch.

The reckless behavior by the insincere bidders at the Auction has not only damaged those IVDS entities who have since satisfied their initial obligations to the Commission, but has delivered a telling blow to the intentions of Congress and the Commission's Report and Order on the matter as well. Of course, it is the public's interest that is defeated by their specious actions. The Commission's swift adoption of the relief sought herein will not only bring equity to those bidders who played by the rules and who are now disadvantaged in the aftermath of the Auction, but will assure the public is served, as originally intended, within the shortest time period possible. Justice demands the relief requested herein.

WHEREFORE, the foregoing considered, Petitioners hereby jointly request that the Commission GRANT the instant Petition for Extraordinary Relief, and provide the relief requested herein as expeditiously as possible.

Respectfully submitted,

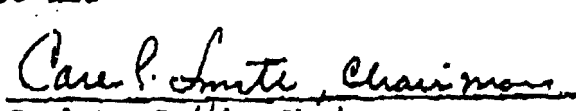
IVDS/RLV Partnership

By: 
Richard L. Vega, Managing Partner


FRIENDS OF IVDS

By: 
William Walker, President

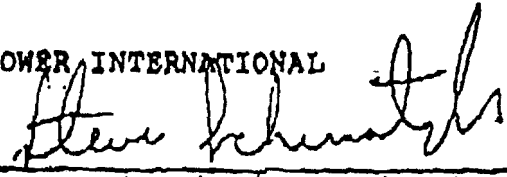
IVDCO LLC

By: 
Carl P. Smith, Chairman

WAYNE PARTNERS

By: 
Marjorie H. Jantzen, Managing Partner

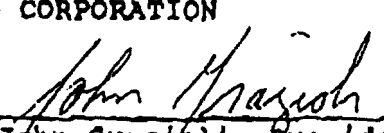
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AG PARTNERS

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Frederick Galland, Partner

WASHINGTON COMMUNICATIONS

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NEW ENGLAND MOBILE COMMUNICATION, INC.

By: 

Kurt Schueler, President

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Phone: (407) 682-7104

Date: August 26, 1994

CERTIFICATE OF SERVICE

I, Denise B. Moline, of the law firm of Denise B. Moline, P.C., hereby certify that I have caused to be served, this 26th day of August, 1994, a copy of the foregoing "PETITION FOR EXTRAORDINARY RELIEF" by Hand Delivery on the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826
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Commissioner Susan Ness
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Denise B. Moline